RESPONSE TO COUNCIL QUESTIONS RE: 11/28/17 CITY COUNCIL AGENDA

Agenda Item #: 1.E
Title: Award of Bid No. PW 18-04 for the Fuel System Upgrade Project located at the Sunnyvale Golf Course, Finding of California Environmental Quality Act (CEQA) Categorical Exemption and Approval of Budget Modification No. 25

Council Question: Please provide an update regarding Council Policy Priority #3, Future of Golf Courses and when specifically will Council evaluate policy options for the golf courses. What would happen if action on this agenda item was deferred until work on the Council Policy Priority was completed?

Staff Response: Staff is preparing a status update on the City's golf courses and plans to deliver a presentation to Council during the January 2018 Council Strategic Session. Currently there is no item scheduled for Council to evaluate policy options for the Golf Course, however that is something Council may elect to pursue in the future. The current fuel tanks at the golf course are old single-wall tanks that were identified in the 20-year budget as needing replacement. During the latest State inspection, a deficiency in the system was noted, however, since there is a project to replace the tanks, immediate action was not required. Deferring the work could put the City at risk of not having fuel at the golf course if the tanks were to exhibit further problems and have to be abandoned.

Council Question: Are the diesel/gasoline only for Golf Course use, or for general City vehicles? How many gallons was currently below ground? Is 1000 gasoline/1000 diesel gallons overkill? What will this structure (that is currently undergrounded) look like at the Golf Course?

Staff Response: The primary use of the fuel tanks is for the golf course; however, other City vehicles can fuel up as well. The current underground tanks consist of 4,000 gallons of diesel and 1,000 gallons of gasoline. Staff reviewed usage and refueling time frames to confirm the size of the new tanks which ultimately led to the reduction in size of the diesel tank. The size of the new above-ground combined tank is approximately 11 feet long x 6 feet wide x 4 feet tall. The location of the tank will be within the existing maintenance facility at the golf course that borders Highway 237 and will generally be out of site from the public. Staff will provide hard copies of a location map at the Council meeting.

Agenda Item #: 1.J
Title: Adopt by Resolution Volume I and Sunnyvale's Annex Within Volume II of the 2017 Santa Clara County Operational Area Hazard Mitigation Plan

Council Question: In Attachment 1, Fact Sheet, could projects with a component of urban farming or eco-villages be eligible for funding as a way to prevent storm water runoff and flooding? "Development and initial implementation of vegetative management programs" is listed as a fundable area.

Staff Response: The Hazard Mitigation Grant Program (HMGP) is intended to provide funding for mitigation efforts during the reconstruction process following a disaster. The City or County would have to be within a Presidential declared major disaster area to apply for funding from the HPGP. Vegetation management is covered under the HMGP, but typically includes projects such as natural dune restoration, wildfire and snow avalanche mitigation. To be eligible for HMGP grant funds, an urban farming or eco-village project would need to demonstrate an ability to prevent localized flooding and could only be proposed during the recovery from a Presidential-declared disaster.

The Pre-Disaster Mitigation Grant Program (PDM) provides funds for pre-disaster mitigation planning and projects. PDM projects can include vegetation management, but do not cover flood control projects such as dikes, levees, floodwalls, seawalls, groins, jetties, dams, waterway channelization, beach nourishment or re-nourishment. If the City would like to apply for a PDM grant to cover urban farming or eco-villages, we would need to demonstrate how the project is cost-effective and would substantially reduce the risk of future damage, hardship, loss, or suffering resulting from a major disaster. Additionally, projects submitted for consideration must be technically feasible and ready to implement. Engineering designs and the effectiveness and feasibility of the proposed project must be submitted with the application. The City would be responsible for all costs associated with the engineering designs and studies. In looking over the criteria for the HMGP and the PDM, staff doesn't believe projects with components of urban farming or eco-villages would be considered for funding.

Council Question: Attachment 2, Volume 1. Chapter 3. Section 3.4 – Why was Water District not included in the planning partnership?

Staff Response: The LHMP Planning Partnership group, which included the City of Sunnyvale, was made up of eligible local governments within the operational area. The Santa Clara Valley Water District was part of the LHMP Working Group. SCVWD project manager, Raymond Fields, represented the District as a working group member and provided recommendations and expertise throughout the LHMP planning process.

Council Question: Attachment 2, Chapter 15. Section 15.3, Identified Needs – In the Crime Prevention bullet item, is the theory referenced the so-called "broken windows" theory or another theory altogether. If the broken windows theory, I thought it was applicable to general socio-economic conditions and less so to post-incident conditions.

Staff Response: Crime Prevention Through Environmental Design (CPTED) is different from the "broken windows" theory. CPTED comes into play during the design and planning phases of development. The Sunnyvale DPS Crime Prevention Unit reviews plans submitted to the City for CPTED recommendations. The Neighborhood Preservation Unit addresses issues related to the "broken window" theory, primarily through code enforcement and working closely with property and businesses owners.

Agenda Item #: 1.K
Title: Approve New First Mortgage Refinance Loan of $3.3 Million in Housing Funds to MidPen Housing Corp. and Modification of Outstanding Loans to Finance Phase Two of Eight Trees Apartments Rehabilitation at 183 Acalanes Drive, Sunnyvale; and Approve Budget Modification No. 26 to Appropriate Funding from the Housing Fund for the New Loan

Council Question: Please provide an estimate of the open-market value of the property.

Staff Response: An appraisal of the property completed in October 2016 by Valbridge concluded with an appraised value of $7.56 million based on the sales comparison approach, and $8.44 million based on the income approach, considering the lower-income rent restrictions currently in place. The values cited are as of February 2016, when the comparables were obtained. The project will become more affordable with lower rents once tax credits are obtained for the project. This will cause the property's appraisal value to decrease somewhat (based on the income approach), although the physical improvements completed through the rehabilitation work will improve the value and useful lifespan of the structures.

Council Question: What would happen to the City's loan principal and accrued interest if the private first mortgagor were to declare a default and foreclose on the property? Is the value of the property in a foreclosure scenario insufficient to cover both the first mortgage and the City's loans plus interest?

Staff Response: If the project were to default on the current first mortgage loan and go into foreclosure, the proceeds from a foreclosure sale would first go to satisfy the outstanding first mortgage, and then toward repaying the currently outstanding City loans. It is unclear what the exact value of the property would be in a short-sale or foreclosure sale situation, however the recent appraisal of roughly $7.6 to $8.4 million provides a good estimate. The total outstanding debt on the property, including the private first mortgage and city debt (including all accrued interest) is approximately $5 million. It appears there is sufficient value in the property to cover the debt even in a foreclosure situation, where the property may not quite reach its standard appraised value at sale. However, the larger concern in that situation is that the City would lose 24 units of existing subsidized affordable housing stock, and 23 lower-income households would be displaced from the property. Most of those households (excepting those with tenant-based Section 8 vouchers) would need substantial relocation assistance to avoid becoming homeless. That assistance would likely cost much more than the amount of interest proposed to be forgiven.

Council Question: What is an annual residual receipt payment and how are they calculated?

Staff Response: "Residual receipts" is a concept used in affordable housing underwriting to refer to surplus cash after standard operating expenses, long-term debt, and (typically) pre-approved deposits to capital replacement reserves, have been paid each year. It is roughly equivalent to net operating income (NOI) as that term is used in accounting for standard investment properties. The annual residual receipt payment is a payment to a "soft debt" lender such as the City or other public/quasi-public lender on a loan that has been structured to have residual receipts payments instead of regular fixed monthly or annual debt payments (i.e., "hard debt" payments). The exact amount of the residual receipts payment depends on the terms of each loan. If there is more than one residual receipts loan on the property, the loan terms of all the soft debt loans are usually standardized to allow the residual receipts to be split "pro-rata" amongst the lenders, based on their pro-rata share of soft debt on the property. For Eight Trees, the City will be the only soft lender, but it will have several loans on the property, so there will be a pro-rata split amongst the different City loans. Also, the loan terms usually allow a 50/50 split of residual receipts between the project owner/operator and the soft lenders, before the pro-rata split amongst lenders occurs. This allows the project operator to reserve and use its share of the surplus cash for incidental resident services and operating costs beyond the projected amounts (i.e., larger than projected utility costs, etc.). In the Eight Trees proposal, staff has negotiated a 75/25 split (75% for the City and 25% for MidPen) rather than the usual 50/50, in exchange for the proposed forgiveness of accrued interest on the outstanding loans and the 0% interest rates. The calculation of residual receipts is done annually following the property's annual financial report and audit, which is completed by an outside auditing firm and shared with the City.

Council Questions: Are the financial projections referred to on page 5 of the staff report available for review?

Staff Response: Yes, see the attached spreadsheet. It shows the cash flow projections including the tenant-based voucher payments, and a 75/25 residual receipts split (75% to City).

Council Question: It seems that, in essence, the City will be making a $3.3 million loan, approximately $2.3 million of which will be used to pay-off the senior loan. Is that a correct way of looking at it?

Staff Response: Yes.

Council Question: How much interest, if any, is the senior loan forgiving to make this deal happen?

Staff Response: The senior lender is not forgiving any interest to make this deal happen. It is a for-profit investor with no interest in forgiving any amounts due under their loan. This was essentially a seller carry-back loan and the seller agreed to sell the property to HomeFirst only with the terms of this carry-back loan included as part of the sale. HomeFirst and MidPen staff have had multiple discussions with this lender in recent years and they are not willing to make any concessions on their loan. There is no outside leverage or legal mechanism for the City or MidPen to use to negotiate anything with this lender. That led to the recommendation to pay off the loan in full.

Council Question: The optics of this deal are puzzling, in that the City will essentially make the primary lender whole while simultaneously forgiving $670 thousand of deferred interest. Is this a correct way of looking at it and how does this strategically make sense?

Staff Response: The City's public interest in the property is to preserve it as long-term affordable housing and facilitate funding for the rehabilitation work needed. The City is not a for-profit lender and therefore its analysis and toolkit for assisting such projects is different than that of for-profit lenders. It is not typically an option in affordable housing projects to negotiate with private investors to ask them to forgive interest and/or principal on loans they have made on affordable housing properties, unless the property overall was failing or losing value to such an extent that the private investor's investment was at risk. Eight Trees is not at that point, because the property exceeds the value of the first loan, so the investor has no incentive to forgive any amounts due or otherwise change the loan terms. If the City or other public agencies made a habit of asking private lenders to make concessions on affordable housing projects, it would likely discourage such lenders from making loans on such projects in the future, which could lead to a long-term inability to obtain commercial financing for such projects when needed.

Also of note, the City's primary rationale in forgiving the accrued interest on its existing loans on Eight Trees is to improve the project's score in the tax credit application process. Due to the extremely competitive nature of the current tax credit process, it is very important for the project to obtain a competitive score in the upcoming application window.

<u>Council Question</u>: Please clarify Attachment 3. Isn't the total of "Construction Sources" supposed to be $12,760,168 (e.g. the same amount as "Permanent Sources" and "Total Development Costs")?

<u>Staff Response</u>: There are some costs that will not be expended during the construction time frame, therefore the Construction Sources total is less than the Permanent Sources.

<u>Council Question</u>: Is the property owner getting a short-term Construction Loan that will subsequently be replaced by Tax Credit Investor Proceeds?

<u>Staff Response</u>: Correct. The tax credit equity proceeds will come in after construction is complete, to take out the construction loan.

<u>Council Question</u>: If the City makes the $3.3 million loan, would our lien at all times be in primary (first-place) position in event of a default/foreclosure (e.g. versus the construction loan)?

<u>Staff Response</u>: During the term of construction, while the construction loan is outstanding, the construction loan will be in first position, through a subordination agreement with the City, to be approved by the City Attorney. That agreement includes certain noticing and other provisions that would allow the City to work with the borrower to cure any default that might occur, to avoid foreclosure. Once the construction loan is paid off by the tax equity proceeds, the City loan will be in first position again, and would remain so in the event of a default/foreclosure.

<u>Council Question</u>: I am trying to compare the loan terms to other affordable housing loan terms that we have provided. Is the 55-year term normal?

<u>Staff Response</u>: Yes, 55 years is the standard loan term for new affordable housing loans. This term is set at that length because that is typically the length of the affordability restrictions on the property, based on industry standards and certain State funding programs and policies, and the loan term generally is equal in length to the restrictions. Additionally, for projects that are also receiving tax credits or other public sector financing at the same time, such as State or County funding, those programs also all use a 55-year term for the restrictions and the loans, and generally the City's loan term cannot be shorter than the other loans or restriction terms. In earlier years, (i.e., 1980's through early 2000's), if a project was funded only with local funds (Housing Mitigation, CDBG and/or HOME

funds), and no tax credits or State/County loans, the City had made loans usually for a 25 or 30-year term, but that practice does not work with projects where tax credits will be involved, such as the current refinancing plan for Eight Trees. In addition, for the project to count as permanent affordable housing under current State programs, such as Housing Related Parks grant program, the restriction term (and therefore the loan term) must be at least 55 years.

Agenda Item #: 3
Title: Approve the Purchase and Sale Agreement for 1050 Innovation Way and 1060 Innovation Way, Sunnyvale (A Portion of Former Onizuka Air Force Station) and Approve Budget Modification No. 22

Attachment 1. Purchase and Sale Agreement:

Council Question: Section 2. What's the reasoning behind the all caps section stating that limits damages to the seller. What is the reason for waiving California Civil Code 3389? Is this done in favor of protections offered in California Civil Code 1671, 1676, and 1677, which state what?

Staff Response: Using bold caps was a stylistic choice on Google's behalf to underscore that the parties are negotiating provisions different than the default under state law. California Civil Code 3389 allows the City to sue for specific performance under the Purchase and Sale Agreement and as part of the negotiations the City would be willing to waive that right to ensure the payment of agreed upon liquidated damages (viz. the $600k initial deposit) should the final sale not occur.

Council Question: Section 3, closing paragraph references a 3(a)(vii) which is not present. Was vii omitted or is this a typo?

Staff Response: Item 3(a)(vii) was deleted at some point during the edits so that reference will be fixed.

Council Question: Section 7(a)(xiii). Are Cities indemnified if a "Specially Designated and Blocked Person" is a resident of a City?

Staff Response: Provision 7(a)(xiii) just attests that the City of Sunnyvale (as the Seller) is not a "Specially Designated Blocked Person (SDBP)" under the Office of Foreign Assets Control and Department of Treasury regulations and the City is not acting on behalf of a SDBP for purposes of this transaction and that Google has the ability to do business with us.

Council Question: Exhibit E. What is the general nature of the items enumerated in Exhibit E. It is not included in the packet?

Staff Response: Staff is working with Google to finalize Exhibit E that will provide any disclosure items.

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Eight Trees Apartments
CASH FLOW PROJECTION

Page Notes:

Not for underwriting purposes. TBRA vouchers added to show how property might operate in actuality.

Year		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
Calendar		**2020**	**2021**	**2022**	**2023**	**2024**	**2025**	**2026**	**2027**	**2028**	**2029**	**2030**	**2031**	**2032**	**2033**	**2034**
Tenant Payments	2.5%	330,607	338,872	347,344	356,028	364,928	374,052	383,403	392,988	402,813	412,883	423,205	433,785	444,630	455,746	467,139
Section 8 Tenant Based Rental Payments	1.0%	106,130	107,192	108,264	109,346	110,440	111,544	112,660	113,786	114,924	116,073	117,234	118,406	119,590	120,786	121,994
Other Income	2.5%	2,304	2,362	2,421	2,481	2,543	2,607	2,672	2,739	2,807	2,877	2,949	3,023	3,099	3,176	3,255
Scheduled Gross Income		439,042	448,426	458,028	467,855	477,911	488,203	498,734	509,513	520,544	531,834	543,388	555,215	567,319	579,708	592,389
Residential Vacancy	5.0%	(16,646)	(17,062)	(17,488)	(17,925)	(18,374)	(18,833)	(19,304)	(19,786)	(20,281)	(20,788)	(21,308)	(21,840)	(22,386)	(22,946)	(23,520)
Section 8 Vacancy	5.0%	(5,307)	(5,360)	(5,413)	(5,467)	(5,522)	(5,577)	(5,633)	(5,689)	(5,746)	(5,804)	(5,862)	(5,920)	(5,980)	(6,039)	(6,100)
Effective Gross Income		417,090	426,004	435,127	444,462	454,016	463,792	473,798	484,037	494,517	505,242	516,219	527,454	538,953	550,723	562,770
Operating Expenses	3.5%	(206,400)	(213,624)	(221,101)	(228,839)	(236,849)	(245,138)	(253,718)	(262,598)	(271,789)	(281,302)	(291,148)	(301,338)	(311,885)	(322,801)	(334,099)
City Monitoring Fee	0.0%		0	0	0	0	0	0	0	0	0	0	0	0	0	0
Services Fee paid from income	3.5%	(55,200)	(57,132)	(59,132)	(61,201)	(63,343)	(65,560)	(67,855)	(70,230)	(72,688)	(75,232)	(77,865)	(80,590)	(83,411)	(86,330)	(89,352)
Replacement Reserves	*0.0%*	(10,800)	(10,800)	(10,800)	(10,800)	(10,800)	(10,800)	(10,800)	(10,800)	(10,800)	(10,800)	(10,800)	(10,800)	(10,800)	(10,800)	(10,800)
Net Operating Income		144,690	144,448	144,095	143,622	143,024	142,294	141,425	140,409	139,240	137,908	136,406	134,726	132,857	130,792	128,519
Net Available Cash		**144,690**	**144,448**	**144,095**	**143,622**	**143,024**	**142,294**	**141,425**	**140,409**	**139,240**	**137,908**	**136,406**	**134,726**	**132,857**	**130,792**	**128,519**
Asset Management Fee	*7,500*	*7,500*	*7,725*	*7,957*	*8,195*	*8,441*	*8,695*	*8,955*	*9,224*	*9,501*	*9,786*	*10,079*	*10,382*	*10,693*	*11,014*	*11,344*
Deferred Developer Fee		*$ -*	*$ -*	*$ -*	*$ -*	*$ -*	*$ -*	*$ -*	*$ -*	*$ -*	*$ -*	*$ -*	*$ -*			
Partnership Management Fee	*25,000*	*25,000*	*25,750*	*26,523*	*27,318*	*28,138*	*28,982*	*29,851*	*30,747*	*31,669*	*32,619*	*33,598*	*34,606*	*35,644*	*36,713*	*37,815*
Services paid from Cash Flow		*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*
Cash Flow prior to Residual Receipts		*112,190*	*110,973*	*109,615*	*108,108*	*106,445*	*104,617*	*102,618*	*100,438*	*98,070*	*95,503*	*92,729*	*89,738*	*86,520*	*83,064*	*79,360*
Residual Receipts to Public Lenders	*75%*	*84,142*	*83,230*	*82,211*	*81,081*	*79,834*	*78,463*	*76,963*	*75,329*	*73,552*	*71,627*	*69,547*	*67,304*	*64,890*	*62,298*	*59,520*
Cash Flow to Owner	*25%*	*28,047*	*27,743*	*27,404*	*27,027*	*26,611*	*26,154*	*25,654*	*25,110*	*24,517*	*23,876*	*23,182*	*22,435*	*21,630*	*20,766*	*19,840*

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ASH FLOW PROJECTION

Year	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
Calendar	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049
Tenant Payments	478,818	490,788	503,058	515,634	528,525	541,738	555,282	569,164	583,393	597,978	612,927	628,250	643,957	660,056	676,557
Section 8 Tenant Based Rental Payments	123,214	124,446	125,691	126,948	128,217	129,499	130,794	132,102	133,423	134,757	136,105	137,466	138,841	140,229	141,631
Other Income	3,337	3,420	3,506	3,593	3,683	3,775	3,870	3,967	4,066	4,167	4,271	4,378	4,488	4,600	4,715
Scheduled Gross Income	605,369	618,655	632,254	646,175	660,426	675,013	689,946	705,233	720,882	736,903	753,304	770,095	787,285	804,885	822,903
Residential Vacancy	(24,108)	(24,710)	(25,328)	(25,961)	(26,610)	(27,276)	(27,958)	(28,657)	(29,373)	(30,107)	(30,860)	(31,631)	(32,422)	(33,233)	(34,064)
Section 8 Vacancy	(6,161)	(6,222)	(6,285)	(6,347)	(6,411)	(6,475)	(6,540)	(6,605)	(6,671)	(6,738)	(6,805)	(6,873)	(6,942)	(7,011)	(7,082)
Effective Gross Income	575,100	587,722	600,642	613,867	627,404	641,262	655,449	669,971	684,838	700,057	715,639	731,590	747,921	764,640	781,758
Operating Expenses	(345,792)	(357,895)	(370,421)	(383,386)	(396,804)	(410,692)	(425,067)	(439,944)	(455,342)	(471,279)	(487,774)	(504,846)	(522,515)	(540,803)	(559,732)
City Monitoring Fee	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Services Fee paid from income	(92,479)	(95,716)	(99,066)	(102,533)	(106,122)	(109,836)	(113,681)	(117,659)	(121,778)	(126,040)	(130,451)	(135,017)	(139,743)	(144,633)	(149,696)
Replacement Reserves	(10,800)	(10,800)	(10,800)	(10,800)	(10,800)	(10,800)	(10,800)	(10,800)	(10,800)	(10,800)	(10,800)	(10,800)	(10,800)	(10,800)	(10,800)
Net Operating Income	126,029	123,311	120,355	117,148	113,678	109,934	105,901	101,568	96,918	91,939	86,614	80,927	74,863	68,403	61,531
Net Available Cash	**126,029**	**123,311**	**120,355**	**117,148**	**113,678**	**109,934**	**105,901**	**101,568**	**96,918**	**91,939**	**86,614**	**80,927**	**74,863**	**68,403**	**61,531**
Asset Management Fee	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*
Deferred Developer Fee															
Partnership Management Fee	*38,949*	*40,118*	*41,321*	*42,561*	*43,838*	*45,153*	*46,507*	*47,903*	*49,340*	*50,820*	*52,344*	*53,915*	*55,532*	*57,198*	*58,914*
Services paid from Cash Flow	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*	*0*
Cash Flow prior to Residual Receipts	*87,080*	*83,194*	*79,033*	*74,587*	*69,840*	*64,781*	*59,394*	*53,665*	*47,579*	*41,119*	*34,269*	*27,013*	*19,331*	*11,205*	*2,617*
Residual Receipts to Public Lenders	*65,310*	*62,395*	*59,275*	*55,940*	*52,380*	*48,586*	*44,545*	*40,249*	*35,684*	*30,839*	*25,702*	*20,259*	*14,498*	*8,404*	*1,963*
Cash Flow to Owner	*21,770*	*20,798*	*19,758*	*18,647*	*17,460*	*16,195*	*14,848*	*13,416*	*11,895*	*10,280*	*8,567*	*6,753*	*4,833*	*2,801*	*654*